SOULS OF YOUNG FOLK:

The Disproportionate Prosecution of Black Youth as Adults in New Jersey
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The New Jersey Youth Justice Initiative (NJYJI) is a family- and youth-driven justice program of the New Jersey Parents’ Caucus (NJPC). NJYJI seeks to improve outcomes for justice-involved youth in New Jersey by ending the practice of waiving youth to the adult criminal justice system, ending solitary confinement of youth in the adult system, ensuring family and youth involvement on all levels of decision making in justice reform, and ultimately, decreasing recidivism rates. NJYJI works toward these improved outcomes for youth and their families through the following activities:

• Providing education and training to parents, family members and youth on their rights, responsibilities, and the advocacy skills needed to navigate child-serving systems;
• Providing free legal advice and representation to youth and parents by a qualified attorney;
• Supporting attorneys representing transferred youth at trial;
• Providing leadership opportunities to system-involved youth through the New Jersey Youth Caucus;
• Providing peer support programs for parents, family members, and youth;
• Increasing awareness through public testimonies and legislative advocacy;
• Training juvenile justice professionals and providers;
• Tracking and corresponding with youth who have current or prior involvement with the juvenile and adult system and their parents, caregivers, and family members;
• Providing evaluation and data analysis.

NJYJI believes family involvement is critical for youth who are involved with the juvenile justice system. Youth and parents need information, training, services and support to help them become knowledgeable about the juvenile justice system and to effectively advocate for themselves and their children. At the same time, juvenile justice systems need to ensure that their policies and procedures support family and youth involvement. The juvenile justice staff must be trained to understand the family perspective, the benefits of family and youth involvement and its impact on public safety, and specific strategies for collaboration and engagement with parents, family members and youth.

Representing a new frontier in the family-led movement to support families raising justice-involved youth, NJPC is the only organization providing this type of support to parents, family members, incarcerated youth, and criminal defense practitioners throughout the state of New Jersey. By addressing youth and family needs from the time of sentencing through reentry to the community, NJYJI enhances the quality of juvenile representation, provides supportive services for families, and improves outcomes for New Jersey’s justice-involved youth.
ACKNOWLEDGMENTS

This research project would not have been possible without the resilience and support of our NJ Youth Caucus members. We are thankful for their cooperation and their dedication to improving the system.

NJYJI is grateful for the parents, caregivers, and family members of our youth caucus members, who are committed to making changes in their homes and communities for the betterment of their children and working together to reform New Jersey’s justice systems.

We are appreciative to the Campaign for Youth Justice for their support, guidance and opportunities. We are further appreciative of the National Juvenile Justice Network (NJJN) for their support. NJPC is indebted to Trinitas Regional Medical Center for its commitment to supporting system-involved youth and their families.

Finally, NJYJI is grateful to the New Jersey Parents’ Caucus volunteers, researchers, staff, board, and members, who devoted their time and knowledge to the implementation of this project.

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Every year, over 75,000 children and youth are tried as adults across the country. Between 32,000 and 60,000 of those youth are held in adult jails. The number of laws providing for the prosecution, incarceration, and sentencing of youth as adults grew substantially in the 1980s and 1990s, including in New Jersey.

In 1982, the New Jersey Legislature enacted laws to waive youth as young as fourteen to the adult criminal justice system. In 1990, 281 youth were referred to criminal court. By 1999, the state had discretionary waiver, presumptive waiver, and mandatory waiver provisions that became more punitive and expansive during the early 2000s. In 2000, 564 youth were referred to adult criminal court in New Jersey, a nearly fifty percent increase from 1990 despite the total number of arrests of youth for the most serious offenses declining by forty-one percent.

The tide of punitive waiver statutes began to turn as a result of advocacy by directly impacted youth, families, attorneys, and organizers. In 2015, the New Jersey Legislature passed S. 2003 which raised the minimum age of waiver to fifteen years old and repealed the discretionary and presumptive waiver laws. As a result, in 2016, the number of youth referred to criminal court decreased to 161 youth, down from 195 in 2014 before the law passed, an eighteen percent decrease.

One critical aspect of S. 2003 was the mandate to track and publish data on youth waived to adult court. Specifically, the Juvenile Justice Commission is tasked with collecting and publishing data on the race, ethnicity, age, gender, degree of offense waived, and case processing time for youth waived to adult court. One purpose of collecting and publishing the data is to better understand and directly address the disproportionate number of black youth entering the adult criminal justice system in New Jersey. While black youth are approximately fourteen percent of the youth population, in the most recent crime reporting data they are approximately forty-four percent of the youth arrested, and as of December 28, 2018, sixty-six percent of the youth waived to adult court in New Jersey.

This brief explores the causes of racial disparities and disproportionality in New Jersey’s waiver of black youth to the adult criminal justice system. To analyze potential causes, we reviewed data from the New Jersey Department of Corrections, the Office of the Attorney General, and the New Jersey State Police along with qualitative surveys from incarcerated youth and their families. In addition to data, we gathered historical research on the treatment of black adults and youth in New Jersey and the development of New Jersey’s waiver laws over the past thirty-seven years. Our conclusion is that there are a constellation of factors including historical, structural, and implicit bias that contribute to the disproportionate waiver of black youth to the adult system.

I. Executive Summary

From the time that I was 15, I spent nine years in the adult prison system. I saw black kids like me getting hot water thrown in their faces as the guards turned away, and others, like predators, walking around looking for weakness to rape somebody. I used to wonder is this really what happens to kids like me? Do they really expect me to come home and be rehabilitated?”

— D.R., 2017
The conditions under which implicit biases translate most readily into discriminatory behavior are when people have wide discretion in making quick decisions with little accountability.”

As a result, the New Jersey Parents’ Caucus recommends ending the practice of waiver of youth to the adult system to address the historical, structural, and implicit bias embedded in the waiver process. We recognize that ending youth waiver is a long-term effort; therefore, to start addressing bias immediately, we recommend holding prosecutors accountable for the discretion they wield in transferring youth to the adult criminal justice system. Specifically, there is a need for more detailed data collection, transparency, and oversight to address the ongoing effects of historical, structural, and implicit bias negatively impacting black youth.

II. The Historical & Structural Context for Racial Disparities in the Waiver of Youth to the Adult Criminal Justice System

A. Historical Treatment of Black Residents in New Jersey

New Jersey first legalized enslaving Black men and women in 1664, but by 1786 state leaders banned slave importation and forbid the settlement of free Black people in the state.16 In February 1804, the New Jersey Legislature passed “An Act for the Gradual Abolition of Slavery.”17 This Act required that children born to enslaved women after July 4, 1804 would only be free after serving their enslaved parents owners until they were twenty-one years old if they were female or twenty-five years old if they were male.18

By the 1830s, two-thirds of enslaved Blacks in the North were held by New Jersey slave owners.19 It was not until 1866 when the legislature adopted the Thirteenth Amendment, ending slavery and indentured servitude for all except those convicted of crimes, that all enslaved Black people in New Jersey were free.20
The following year, 1867, New Jersey constructed a youth prison in Jamesburg on 900 acres of land that was developed to hold thousands of youth.21 According to a New York Times article from 1895, at that time the facility held 372 youth, 59 youth (approximately sixteen percent of the population), were described as “colored.”22 On December 24, 2015, 120 years after the article, there were 324 committed youth in New Jersey, 222, approximately sixty-nine percent, were black youth.23

The end of slavery in New Jersey and across the country, marked the beginning of structural and legal systems to maintain the caste and privileges associated with being white and disassociated from being black. Specifically, the adoption of Jim Crow ordinances24 and the exception to the Thirteenth Amendment continued the trend of locking Black citizens out of opportunities and into mass incarceration.

Between 1975 and 2015, New Jersey’s jail and prison population increased by 278%.25 Children, particularly Black children, were not protected from the phenomenon of mass incarceration. In 2015, New Jersey’s incarceration rate of Black children in youth prisons was thirty times the rate of incarceration of White children.26

B. The Development of Youth Waiver Laws in New Jersey

From 1982 to 1999 during the “tough on crime” era,27 New Jersey developed and strengthened its youth waiver laws.28 By the end of this era, New Jersey had three waiver mechanisms: judicial discretion, presumptive waiver, and mandatory waiver.29 All of these waiver mechanisms require prosecutors to motion for a waiver by a juvenile court judge.30 The discretion afforded to juvenile court judges to keep youth in the juvenile system is limited by presumptive waiver and nearly eliminated by mandatory waiver.31

In 2015, the legislature repealed judicial discretion and presumptive waiver and raised the minimum age of waiver to fifteen years old.32 Under S.2003, the judge shall transfer a youth to adult court if they are fifteen and there is probable cause to believe they have committed a number of offenses including criminal homicide, first degree robbery, carjacking, aggravated assault, possession of a firearm during the attempt or commission of an assault, and any crime after a youth has already been sentenced and confined to an adult facility before.33 However, the judge must be clearly convinced that the prosecutor has not abused his or her discretion in considering a number of factors about the youth before filing a motion for waiver.34

(3) The court may deny a motion by the prosecutor to waive jurisdiction of a juvenile delinquency case if it is clearly convinced that the prosecutor abused his discretion in considering the following factors in deciding whether to seek a waiver:

(a) The nature and circumstances of the offense charged;

(b) Whether the offense was against a person or property, allocating more weight for crimes against the person;

(c) Degree of the juvenile’s culpability;

(d) Age and maturity of the juvenile;

(e) Any classification that the juvenile is eligible for special education to the extent this information is provided to the prosecution by the juvenile or by the court;

(f) Degree of criminal sophistication exhibited by the juvenile;

(g) Nature and extent of any prior history of delinquency of the juvenile and dispositions imposed for those adjudications;

(h) If the juvenile previously served a custodial disposition in a State juvenile facility operated by the Juvenile Justice Commission, and the response of the juvenile to the programs provided at the facility to the extent this information is provided to the prosecution by the Juvenile Justice Commission;

(i) Current or prior involvement of the juvenile with child welfare agencies;

(j) Evidence of mental health concerns, substance abuse, or emotional instability of the juvenile to the extent this information is provided to the prosecution by the juvenile or by the court; and

(k) If there is an identifiable victim, the input of the victim or victim’s family.
There are two factors that require the consideration of prior contact with the juvenile justice system. These factors often disproportionately impact youth of color who are exposed to systemic over-policing. In 1985, in New Jersey v. T.L.O., the U.S. Supreme Court sanctioned the warrantless search of students in school. With this Court decision, the rise of zero tolerance school discipline policies, and an increase in funding for school resource officers, more and more youth, particularly youth of color began coming into contact with the police in schools.

The U.S. Department of Education, Office of Civil Rights Data Collection published data on school-based referrals to law enforcement and school-related arrest for the 2013-2014 school year. In New Jersey, over 2,700 students received school-based referrals to law enforcement. Black youth received thirty one percent of the referrals despite being a little over fifteen percent of the student population. Similarly, Black youth were also overrepresented in school-related arrests.

*American Indian or Alaska Native

Data source: School Year 2013-2014 Civil Rights Data Collection, Department of Education
C. Racial Disproportionality in Waiver in New Jersey

Racial disproportionality is a persistent issue in New Jersey. From 2011 to 2016, prosecutors in New Jersey requested waivers for approximately 1,251 youth. Nearly sixty-eight percent of those youth were Black, despite Black youth making up fifty-two percent of the youth arrested for Part I offenses, considered the most serious crimes, during that same period.\textsuperscript{39}

The Juvenile Justice Commission (JJC) of the State of New Jersey, Department of Law & Safety, Office of the Attorney General provides weekly reports on juvenile demographics and statistics, which include waiver data by race and gender.\textsuperscript{40} Figures 2 and 3 display racial disparities in waivers by these factors. The JJC began the provision of weekly waiver data available in June 2018. Rather than report by week, we selected raw data from the end of each month to use as a snapshot of New Jersey waiver data. Note that the data for the months of July and October occur mid-month, as the weekly reporting was incomplete for these months. Overall, the data shows that over time Black male and female youth are more likely to be waived compared to their Hispanic and White counterparts.
The historical, social and structural treatment of Black youth and adults in New Jersey has shaped individual bias that manifests in the criminal justice system. There are many factors that produce racial disparities. One of those factors is implicit racial bias. Implicit biases are “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner,” influencing individuals to inadvertently utilize “cognitive shortcuts to filter information and categorize people according to cultural stereotypes.” As a result, individuals may form associations, and consequently behave in ways, that reflect negative cultural stereotypes, even if their actual values are contradictory.

Implicit biases naturally exist in everyone and generally reflect unconscious cultural attitudes and stereotypes rather than conscious personal stereotypes. For example, Harvard’s implicit bias study consistently reports that “members of stigmatized groups (e.g., Black people, gay people, older people) tend to have more positive implicit attitudes toward their groups than do people who are not in the group, but that there is still a moderate preference for the more socially valued group,” demonstrating that negative implicit biases affect people of all races, even if the cultural norm places one’s own group at a disadvantage.

III. Implicit Bias & the Waiver of Black Youth to the Adult Criminal Justice System

It is important to note that the JJC weekly reports are not cumulative. They are a snapshot of youth with active cases on the date of the weekly report. The reports also include data on offense categories (i.e. drug, persons, property, public order, VOP, weapons, and other offenses). Youth may have multiple offenses or charges, but how many is unclear from the reporting. In addition, while the report provides the number of youth waived by race and ethnicity, it does not provide data on the race and ethnicity of youth waived by county, offense, or special education need. This additional data is critical for understanding where the largest racial disparities exist and to compare the types of offenses that result in black youth being waived to adult court compared to their white and Hispanic peers. Data on the outcomes of the waiver and the types of sentences youth receive by race would also be helpful to address disparity concerns.
Last year, the New Jersey Legislature passed a Racial Impact Statement bill to “provide an opportunity for lawmakers to address the state’s high rate of racial disparity in incarceration.” This bill is an acknowledgement of the historical, legal, implicit and explicit biases that have led to mass incarceration of people of color. The bill states that “criminal justice policies, while neutral on their face, often adversely affect minority communities,” acknowledging the implicit and structural biases that exists in some policies and practices.

For example, the waiver and sentencing of youth prosecuted as adults in New Jersey involves a significant amount of personal discretion on the part of prosecutors. Prosecutors have full discretion to introduce the initial waiver motion. While zero tolerance policies and laws that require mandatory sentencing are inappropriate, especially for youth, prosecutorial discretion without transparency and oversight is equally damaging, particularly for Black youth.

There is “converging evidence that Black boys are seen as older and less innocent and that they prompt a less essential conception of childhood than do their White same-age peers.” Specifically, results from one study determined that “the perceived innocence of Black children age fourteen to seventeen was equivalent to that of non-Black adults age eighteen to twenty-one,” maintaining that Black children have a tendency to be prematurely seen as, and consequently treated as, adults in comparison to their White peers.

In addition, “the pervasiveness of negative stereotypes about youth of color in America” influences people to “consciously or subconsciously associate Black youth with crime and dangerousness.” This association has been consistently observed in multiple studies. For instance, one study determined that over seventy-percent of those who falsely recalled viewing a criminal suspect in a news report believed the suspect to be Black, though no identity of a suspect was ever described or displayed at all. Another study found that people were more favorable to harsh sentences when they believed youth were Black rather than White. The deeply ingrained implicit racial bias in American culture requires data collection, transparency, oversight, and policy change to identify, respond, and remedy racial biases within the criminal justice system.
The New Jersey Parents’ Caucus recommends that system stakeholders and legislators take the following actions to address racial disparities in the waiver of Black youth to adult courts and prisons.

The Legislature should require comprehensive data collection by race and ethnicity of youth waived to adult court.

- Collect and publicly release cumulative calendar year data on the race and ethnicity of youth waived by age, offense type, county, special education need, and mental health diagnosis.
- Collect data on the exposure to trauma, specifically the adverse childhood experiences (ACES) of youth charged as adults.\textsuperscript{51}
- Pass legislation requiring data collection and publication on the most common factors resulting in a motion for waiver by prosecutors.
- Pass legislation requiring data collection on the disposition, sentence type, and sentence length of youth waived to adult court by race and ethnicity.

The New Jersey Juvenile Justice Advisory Group should develop goals and an explicit plan to address racial and ethnic disparities in the waiver of youth to adult court.

- Under the Reauthorized Juvenile Justice and Delinquency Prevention Act, also known at the Juvenile Justice Reform Act of 2018, the Juvenile Justice Advisory Group and staff are now responsible for developing measurable goals and objectives to reduce racial and ethnic disparities in the state’s juvenile justice system.\textsuperscript{52} This federal requirement provides an opportunity for additional data collection to be thoroughly analyzed and operationalized through specific measurable goals to reduce racial and ethnic disparities at the point of waiver.

New Jersey should hold prosecutors accountable by providing oversight, technical assistance, and training to localities that have significant and ongoing racial and ethnic disparities in the waiver process.

- One longitudinal study that provided a twelve-week “multi-faceted prejudice habit-breaking intervention to produce long-term reductions in implicit race bias” produced dramatic results. The particular intervention employed focused upon “the premise that implicit bias is like a habit that can be broken through a combination of awareness of implicit bias,\textsuperscript{53} concern about the effects of that bias, and the application of strategies to reduce bias.”\textsuperscript{54} Given the fact that the intervention effectively reduced implicit bias, which commonly contributes to unintentional and unconscious forms of discrimination, New Jersey should consider proposing a similar program for all those involved in the criminal justice system.
- The legislature should also require that prosecutors develop plans in collaboration with other local officials and the community around reducing racial disparities. The plan should be presented publicly and provided online with an opportunity for public feedback.
- Prosecutors who are unable to reduce racial disparities or disproportionality in the waiver process should receive targeted technical assistance and monitoring to support the implementation of their plans to reduce disparities.

The Legislature should commission an evaluation of the use and effectiveness of the racial impact statement law and consider whether the law should be amended.

- Passing legislation to require racial impact statements on criminal justice related bills was an important first step in reducing the likelihood that future legislation further exacerbates racial disparities. However, it is important to understand how legislators weigh the racial impact statements in their ultimate decision to vote for or against a bill. This type of evaluation could help determine whether the law is useful or should be strengthened moving forward.
CONCLUSION

Confronting and dismantling the constellation of factors that contribute to the racial and ethnic disparities in the waiver of black youth to New Jersey’s adult criminal justice system requires transparency, comprehensive data, training, and oversight. Ultimately, eliminating the waiver of youth to the adult criminal justice system is the only way to ensure that historical, structural, and implicit bias do not continue to negatively impact youth of color. Until waiver is eliminated, system stakeholders and legislators must take steps to address the factors that contribute to these disparities. While addressing factors like implicit bias seem daunting there is research to suggest that it is not impossible. Implicit negative biases are not innate; rather, they are developed from society’s culturally accepted preferences. It is therefore reasonable to propose, “if implicit attitudes and stereotypes can be learned, ... they can also be unlearned or inhibited by equally well-learned countervailing influences through extensive retraining." Transparency, data, training, and policies that acknowledge the historical and structural impact of race on waiver decisions can help shift the consciousness of key system stakeholders.
DEDICATION

Dedication to All of the Children Included in the Data Brief
DEDICATION

M. • Vanessa M. • Jonabel M. • Victor M. • Quaran M. • Timothy M. • Tyrief M. • Leroy M. • D’Amaini M. • Michael M. • Somny Leandro M. • Leonardo M. • Steven M. • Marvin M. • Quashon M. • Alfonza M. • James M. • Shyheim M. • Shaquan M. • John M. • Terell M. • Mascoty M. • Maximo M. • Effren M. • Nestor M. • Juwan M. • Tasheed M. • Tahjee M. • Isaac M. • Demitrius M. • Bryan M. • Jabril M. • Onesaque M. • Ahmed M. • James M. • Oscar M. • Brandon M. • Elijah M. • Karon M. • Vanessa M. • Jessica M. • Samuel M. • Effren M. • Evelyn M. • Ronald M. • Tymar M. • Ali M. • Travis M. • Malcolm M. • Lewis N. • Christoph N. • Wilfredo N. • Kyle N. • Ramone N. • Blake N. • Blake N. • Justin N. • Miller N. • Alfonso N. • Jamal N. • Giovanni N. • Demitri N. • Rashaad N. • Christopher N. • Alamri N. • Kwesi O. • James O. • Kenneth O. • Samuel O. • Shawn O. • Jose O. • Charles O. • Gregory O. • Jibri O. • Jordan P. • Ismale P. • Tamere P. • Nur Raheem P. • Ariel P. • David P. • Dagoberto P. • Whitmore P. • Elizadro P. • Jorge P. • Robin P. • Kaseem P. • Timothy P. • Torrey P. • Julian P. • Brandon P. • Kemothy P. • Dashawn P. • Marquise P. • Darien P. • David P. • Aron P. • Wilifredo P. • Marsone P. • Jamal P. • Dariel P. • Kareem P. • Tahlija P. • Kendall P. • Daniel P. • Derell P. • Anthony P. • Omar P. • Jawon P. • Adbus-Salam Q. • Samuel Q. • Jamal R. • Supreme R. • I-now R. • Shawn R. • Steven R. • Ramon R. • Santiago R. • Dashawn R. • Quamere R. • John R. • Shaheed R. • Harry R. • Santiago R. • Duvall R. • Shawn R. • Orlando R. • Ezequiel R. • Yusef R. • Jordan R. • Damiere R. • Shakeem R. • Johnny R. • Justin R. • Tyree R. • Steven R. • Jevon R. • Ronald R. • Jacyr R. • James R. • Benjamin R. • Erick R. • Martin R. • Otis R. • Franz R. • Norwood R. • Patrick R. • Nasir S. • Munaji S. • Juan S. • Thomas S. • Edward S. • Stefan S. • Mikhail S. • Tashawn S. • Jarome S. • Joselin S. • Delfin S. • Oscar S. • Michael S. • Shabani S. • Nyreek S. • Dermaine S. • Bashir S. • Tehziah S. • Christoph S. • Bryan Anthony S. • McNeil S. • Dashon S. • Danique S. • Al-Semir S. • Tyshon S. • Wade S. • Rahmir S. • Earl S. • Mullijah S. • Ahmad S. • Devante S. • Jonathan S. • Ricky S. • Michael S. • Joseph S. • Joseph S. • Walif S. • Jaworski S. • Najee S. • Jirman S. • Steven S. • Anthony S. • Tyreik S. • Albert S. • Kevin S. • Nicholas S. • Devel S. • Christoph S. • Koron S. • Brandon S. • Kyleah S. • Kashawn S. • Rahman S. • Hakim S. • Jay S. • Corey S. • Jeremy T. • Akeem T. • Darren T. • Deandre T. • David T. • Raheem T. • Amaad T. • Shannon T. • Jonathan T. • Jonathon T. • Peterson T. • Harold T. • Matthew T. • James T. • Omar T. • Daurice T. • Sean T. • Quawi T. • Charles U. • Edwin U. • Dana U. • Tyree V. • Jonathan V. • Isaiah V. • Joe V. • Jordan V. • Kevin V. • Guillermo V. • Alvero V. • Jayson V. • Abdul W. • Tysean W. • Kyle W. • Eugene W. • McQuan W. • Quadir W. • Derrick W. • Olivero W. • Marese W. • Walter W. • Tatrone W. • Juanaya W. • Deandre W. • Tyshawn W. • Diquan W. • Darien W. • Shamal W. • Al-Fuquan W. • Jabar W. • Kareem W. • Brenda W. • Lewis W. • Devonte W. • Khalil W. • Nazir W. • Sheldon W. • Darrell W. • Ronald W. • Byron W. • Al-Shaqar W. • Al-Quadir W. • Garry W. • Kayon W. • Tommie W. • Jerome W. • Daniel W. • Abdus W. • Brandon W. • Douglas W. • Radri W. • Bejamin Y. • James Z. • Marcus Z. • Tyquan Z. • Terence Z. • Ricky Z. • Joe Z.
ENDNOTES

20 Ibid.


22 Ibid.


29 Ibid.
30 Ibid.
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33 Ibid.
34 Ibid.


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42 Ibid.


47 Ibid.

48 Supra n. 41.


54 Ibid.